

Supreme Court Agrees to Hear Case on Standing in Lanham Act False Advertising Cases

June 12, 2013

On June 3, the U.S. Supreme Court granted the certiorari petition of Lexmark International Inc. ("Lexmark"). Lexmark sought cert to resolve a three-way split among the federal circuit courts regarding how to determine whether a plaintiff has standing to sue for false advertising under the Lanham Act.[\[1\]](#)

The Supreme Court certified the following question:

Whether the appropriate analytic framework for determining a party's standing to maintain an action for false advertising under the Lanham Act is (1) the factors set forth in *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 537-45 (1983), as adopted by the Third, Fifth, Eighth, and Eleventh Circuits; (2) the categorical test, permitting suits only by an actual competitor, employed by the Seventh, Ninth, and Tenth Circuits; or (3) a version of the more expansive "reasonable interest" test, either as applied by the Sixth Circuit in this case or as applied by the Second Circuit in prior cases.[\[2\]](#)

As previously detailed in a [client alert issued on March 18, 2013](#), Lexmark sued Static Control Components, Inc. ("Static Control") for alleged patent and copyright infringement relating to Static Control's sales of components for third-party replacement printer cartridges. Static Control counterclaimed for, *inter alia*, false advertising under the Lanham Act. The U.S. District Court for the Eastern District of Kentucky dismissed all of Static Control's counterclaims including, on standing grounds, the false advertising claim.[\[3\]](#)

In August 2012, the Sixth Circuit reversed the dismissal of Static Control's false advertising counterclaim, finding that Static Control had standing to bring the claim under the "reasonable interest" test.^[4] In January 2013, Lexmark sought cert, asking the Supreme Court to resolve "the widening circuit split on this important issue of federal law."^[5] Oral arguments and a decision are due in the court's next term, beginning in October 2013.

Currently, several states only allow an actual competitor to bring a Lanham Act false advertising challenge. The Supreme Court could choose to adopt that requirement as a nationwide standard or lower the bar for standing, which could potentially increase the number of false advertising challenges filed.

^[1] *Lexmark Intern., Inc v. Static Control Components, Inc.*, 81 U.S.L.W. 3414 (U.S. June 3, 2013)

^[2] *See Lexmark Intern., Inc v. Static Control Components, Inc.*, 81 U.S.L.W. 3414 (U.S. Jan. 14, 2013)

^[3] *Static Control Components, Inc v. Lexmark Intern., Inc.*, 2006 U.S. Dist. LEXIS (E.D. Ky. Sept. 28, 2006)

^[4] *Static Control Components, Inc v. Lexmark Intern., Inc.*, 697 F.3d 387 (6th Cir. 2012)

^[5] *Lexmark Intern., Inc v. Static Control Components, Inc.*, 81 U.S.L.W. 3414 (U.S. Jan. 14, 2013)